



IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Revision No. 1147 of 1996

APPLICANT : Surjit Singh S/o late Harbans Singh  
Bhatia, aged about 48 years,  
occupation business, resident of  
Dayal Bandh, Bilaspur, district  
Bilaspur (MP).

Versus

NON-APPLICANT : The State of Madhya Pradesh  
Through District Magistrate  
Bilaspur (MP)

MEMO OF REVISION PETITION UNDER SECTION 397 R/WITH SECTION  
401 OF Cr.P.C.

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CRIMINAL REVISION NO.1147 OF 1996

Surjeet Singh

vs.

The State of Madhya Pradesh

ORDER

By this petition, under Section 397 read with Section 401 of the Code of Criminal Procedure, the applicant seeks to impugn the correctness, validity and propriety of the order dated 11-9-1996 passed in Criminal Appeal No.91/96 by the learned Additional Sessions Judge, Jashpurnagar, confirming the judgment and order dated 27-3-1996 passed in Criminal Case No.284/96 by the learned Additional Chief Judicial Magistrate, Jashpurnagar.

2. The facts reveal that on 25-3-1996, at about 8.45, one Harihar Sai was transporting forty-seven cartons of Beer illegally in a Jeep bearing registration No.MP 26F/0717. The challan was filed against the said accused and he pleaded guilty. The learned trial Judge on the plea of guilty, convicted the accused and imposed the sentence of fine of Rs.2,000/-. The said order was passed on 27-3-1996. However, on 1-5-1996, an application was made by the Assistant District Prosecution Officer to the Court that proper orders be passed in relation to the contraband liquor. On the same date, the learned Additional Chief Judicial Magistrate allowed the application. It appears that while convicting the said Harihar Sai on 27-3-1996 the learned trial Court directed confiscation of the Jeep.

3. The applicant, who is the registered owner of the said Jeep, being aggrieved by the said order, preferred criminal appeal No.91/96, which was dismissed on 11-9-1996. Therefore, he has filed this revision petition.

4. Submissions of the learned counsel for the applicant are that the applicant is the registered owner of the vehicle and before confiscation of the property, he was required to be heard. According to him, in view of Section 46(2) of the M.P. Excise Act, a vehicle certainly can be confiscated if it is found involved in commission of the offence, but if the registered owner or the owner of the vehicle proves to the satisfaction of the Court that the vehicle was used and utilised without his knowledge or there was no culpability on his part, then such a vehicle cannot be confiscated. According to him, while passing the confiscation order, the applicant was not heard and the appellate Court was absolutely unjustified in observing that the applicant could himself appear and take part in the proceedings. On the other hand, learned counsel for the State has supported the orders, passed by the two Courts below. I have heard the parties and perused the records.

5. From the records, it appears that on 27-3-1996, said Harihar Sai was produced before Additional Chief Judicial Magistrate, the challan was filed and said Harihar Sai pleaded guilty before the said Court. The trial Court imposed a fine of Rs.2,000/- against the said Harihar Sai, who immediately paid the same. Undisputedly, said Harihar Sai was not the owner of the vehicle. On the strength of the records, it cannot be disputed that the vehicle in question belonged to the present applicant. A copy of the registration certificate, power of attorney and the insurance policy is available on the record. It would clearly show that the vehicle belonged to the present applicant and said Harihar Sai had nothing to do with the said vehicle. In accordance with the provisions of the Excise Act, the applicant certainly was entitled to be heard. The approach of the lower appellate Court that the applicant himself could have taken part in the proceedings cannot be accepted.

6. When the law says that a person is required to be heard, then he is required to be heard. If the law says that the <sup>By</sup> same thing is to be done in accordance with the law in a particular manner then the said thing is to be done in accordance with the law and in that particular manner or not at all. It would be too much to say that the applicant himself could have appeared before the trial Court and placed his case. Nobody says that the applicant was informed that the challan would be filed on a particular date and the applicant was required to appear before the said Court. From the records, it only appears that immediately after seizure of the vehicle the fact was brought to the notice of the present applicant. Beyond that, neither the prosecution has brought anything on the records nor the Courts below have found. Not only an opportunity is to be given to a person, who has a right to meet the allegations, but the opportunity must be an effective opportunity and in cases like present the objections raised by the applicant cannot be brushed aside very lightly simply observing that he himself could have taken part in the proceedings. The law enjoins a duty upon every Court to issue a notice before confiscating <sup>some one's</sup> ~~his~~ property. A person would suffer the consequences if he is unable to satisfy the judicial conscience of the Court that the offence was committed without his knowledge but once he satisfies the judicial conscience of the Court that the offence was committed and without his knowledge / he had no culpability nor conspired in commission of the said offence then obviously the law would open the gates for him to get justice. In the present case, the learned Courts below were absolutely unjustified in not granting opportunity <sup>to</sup> / the applicant to submit his case before them. The orders relating to confiscation of the said vehicle MP-26F/0717 are set aside. The matter is remitted to the trial Court for decision in accordance with law. The applicant shall appear before the ~~lower~~ <sup>R.S</sup> Court ~~or before the~~ trial Court on 20-12-2000. The Registry

is directed to remit the records to the trial Court so that the same reaches that Court before the date given to the parties. The applicant shall be given proper opportunity to plead his case before the trial Court and lead evidence in case he wants to lead oral evidence before the trial Court.

7. The petition is allowed.

Sd/-

Acting Chief Justice

16-11-2000

B.M.